

Town of Frederick Board of Trustees



Eric Doering, Mayor

Sue Wedel, Mayor Pro Tem
Liberta Hattel, Trustee
Amy Schiers, Trustee

Tony Carey, Trustee
Gerry Pfirsch, Trustee
Jim Wollack, Trustee

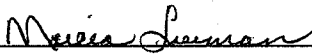
AM 2009-056

Acknowledgement of Real Property Transfer and Assignment of Public Improvement Obligations for Raspberry Hill Subdivision, Phases III and IV

Agenda Date: Town Board Meeting - June 23, 2009

Attachments:

- a. Resolution 09-R-____ - Acknowledging Transfer of Property and Assignment of Public Improvement Obligations
- b. Vicinity map

Fiscal Note: None noted _____

Finance Director

Submitted by: Richard Leffler, P.E. 
Town Engineer

Approved for Presentation: 
Town Administrator

AV Use Anticipated Projector _____ Laptop _____

Certification of Board Approval: _____
Town Clerk Date

Summary Statement:

Capital Real Estate Services ("CRES"), the successor in interest to Phases III and IV of the Raspberry Hill Subdivision, has requested that the Town assign the outstanding public improvement obligations under the MOAPI on the property to CRES, and accept substitute improvement security in place of the security currently held from DR Horton.

Detail of Issue/Request:

Pursuant to the Subdivision regulations of the Town of Frederick Land Use Code, 2004, DR Horton was required to enter into a Memorandum of Agreement for Public Improvements (MOAPI)

contemporaneous with the receiving final approval from the Town of the Final Plat for the Raspberry Hill Subdivision. The MOAPI was executed and recorded in December, 2004. Since that time, DR Horton has posted an initial letter of credit for the development and commenced development of Phases I and II. Final acceptance of the public improvements in Phases I and II has been given by the Town, and as of October, 2007, the Town has retained improvement security in an amount equal to 10% of the remaining public improvements in the MOAPI for Phases III and IV.

Pursuant to Section 14.8 of the MOAPI, upon transfer of any real property burdened by the MOAPI, other than an individual improved residential lot, the original developer and its successor shall become joint and severally liable for performance of the improvements set forth in the MOAPI. CRES desires to be recognized as the current property owner of Phases III and IV of the Raspberry Hill Subdivision and accordingly has requested the Town assign the remaining developer obligations of the MOAPI to CRES. CRES is also willing to replace the current letter of credit for improvement guarantee/security posted by DR Horton with a negotiable instrument/guarantee of its own. As provided for in Section 1.10 (e) of the MOAPI, staff is recommending that the estimated cost of improvements be reviewed and adjusted as needed prior to releasing DR Horton's improvement security. Approval of the attached Resolution No. 09-R-_____, would authorize the transfer of the remaining public improvement obligations from DR Horton to CRES, subject to the conditions included in the resolution. If the resolution is approved, the actual letter of credit or other improvement security from CRES would need to be reviewed and approved by the Town Attorney prior to releasing DR Horton's improvement security.

Legal/Political Considerations:

The Town needs to make sure in acknowledging the real property transfer, accepting substitute improvement guarantee(s), and releasing DR Horton, that CRES is adequately covering the contingencies contemplated in the MOAPI, as drafted, has posted adequate security, and that some entity is still available for remedial performance during all times of the warranty periods for Phases III and IV, as well as any remaining portion of the warranty period for Phases I and II.

Alternatives/Options:

In lieu of assigning the remaining public improvement obligations under the MOAPI, the Town could hold both developers joint and severally liable for the full development cycle, retaining improvement security from one or both in the amount required under the LUC-- 10% of estimated cost for remaining improvements.

Financial Considerations:

Not Applicable.

Staff Recommendation:

Staff recommends that the Board approve the attached Resolution No. 09-R-_____, authorizing the assignment of public improvement obligations for Raspberry Hill subdivision to Capital Real Estate Services.